IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1393 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DADAN ALIAS SHEKHAR SURYANARA-YAN TIWARI

Versus

COMMISSIONER OF POLICE, AHMEDABAD CITY

Appearance:

MR KAMLESH KACHHAVAH for Petitioner

MR IM PANDYA AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 04th of December, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 04th of December, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration three crimes registered against the petitioner, and secondly, the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 01st of December, 2004 and verified by the detaining authority on 03rd of December, 2004. The identity of the witnesses is not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of three crimes, first crime came to be registered against the petitioner before Maninagar Police Station on 16th of October, 2004, for the offences punishable under Sections 143, 147, 148, 149, 324 and 506(2) of the Indian Penal Code. It was alleged that the petitioner and his accomplices attacked the complainant with swords and caused injuries to the complainant and witness. The second crime was registered before Maninagar Police Station, on 16th of October, 2004 for the offences punishable under Sections 143, 147, 148, 149, 324 and 506(2) of Indian Penal Code. It was alleged that the petitioner along with his accomplices assaulted the complainant on the ground that the complainant was not giving money to the petitioner. Third crime was registered before Amraiwadi Police Station on 16th of November, 2004 for the offences punishable under Sections, 294(b), 394 and 114 of the Indian Penal Code as well under Section 25(1) (A)(B) of the Indian Arms Act, 1959. It was alleged that the petitioner and his accomplices with weapons like revolver, under threat of murder, extorted an amount of Rs.1,200/-. The detaining authority thoroughly and exhaustively examined the investigation papers in all the three crimes registered against the petitioner and came to the conclusion that the petitioner was a habitual offender.

4. Out of two in-camera statements, the first witness referred to an incident occurred on 11th of November, 2004. At about 7.30 p.m. the witness was

going to his residence and while he was passing near Hatkeshwar-Amraiwadi Maitri Park Society, he was accosted by the petitioner and his accomplices. The witness was told that the petitioner intended to go outside to meet his friend and he was in need of Rs. 2,000/-. The witness refused to give that amount to the petitioner. Thereupon, the petitioner got excited and after catching hold of the witness, through revolver under the threat, extorted amount of Rs.1,800/- by force from the witness. The witness was thereafter beaten by the petitioner. Though a crowd was gathered but on account of fear of the petitioner, crowd was dispersed and public order was disturbed. The second witness referred to an incident of 12th of October, 2004. At about 8.30 p.m. the witness was present at his place of business and was approached by the petitioner and his accomplices and they demanded installment money. The witness refused to give such instalment of Rs. 200/- per month to the petitioner and thereupon the petitioner and his accomplices got excited and started abusing and beating the witness after dragging him in the public place. The witness was threatened to kill by knife. Though a crowd was gathered but was dispersed on account of fear of the petitioner and public order was disturbed.

5. After relying upon the above material, the detaining authority came to the conclusion that the petitioner was indulged in anti-social, illegal and dangerous activities and was a dangerous person within the meaning of the PASA Act. The detaining authority concluded that the petitioner was headstrong, ferocious and of violent temperament and was in habit of administering threats to innocent citizens and to beat them. The detaining authority concluded that on account of fear of the petitioner, none dared to file complaint against the petitioner. The detaining authority came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned Advocate Mr.Kamlesh Kachhavah for the petitioner and learned AGP Mr.I.M. Pandya for the respondents were heard at length. The affidavit-in-reply and further affidavit-in-reply filed by the detaining

authority as placed on record are also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether the right of the detenu to make effective representation enshrined under Article 22(5) of the Constitution of India is infringed. It is contended that the detaining authority took into consideration the three crimes registered against the petitioner and investigation papers in the said cases. In all the three cases, a simple copy of the panchnama of the scene of offence and all discovery as well as recovery panchnamas were supplied to the detenu. However, the said copy of panchnama did not bear the signatures of the panchas and did not reflect the exact position of the original document. This is so because the copies supplied were typed copies. In terms it is contended that the material which the detaining authority took into consideration has not been supplied to the detenu in its proper form so as to make effective representation. To this, learned AGP, drew the attention of this Court towards the further affidavit filed by the detaining authority, contended that in those cases charge sheets have been filed and copies are supplied to the detenu. From the rival contentions, it clearly appears that the detaining authority took into consideration the whole investigation papers in all the three crimes registered against the petitioner. Screening the grounds of detention as placed on record, it is clearly borne out that all the three cases were pending for investigation. Meaning thereby that no charge sheets were filed till 04th of December, 2004, in the said cases before the appropriate court. The detention order came to be passed on 4th of December,2004, and on that day the charge sheets were not filed. It is undisputed that the panchnama, the material piece of evidence, links the petitioner with the crimes, is a vital document and proper copy reflecting the exact position of the original document must be supplied to the detenu. In absence of supplying such copies to the detenu, undoubtedly, detenu's right to make effective representation, as guaranteed by Article 22(5) of the Constitution, would be infringed. In the present case, admittedly, the copies of panchnamas were not supplied to the detenu reflecting the exact position of the original document nor the charge sheets were filed till the date of passing of the detention order, so the detenu did not get opportunity to look at panchnamas properly. In these circumstances, it can be said that the detenu's right to make effective

representation is infringed and further detention of the petitioner becomes illegal. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 04th of December, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu- Dadan alias Shekhar Suryanarayan Tiwari is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair